

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1906

IN THE MATTER OF:

Served October 18, 1978

Application of McKINLEY BATTLE)	Case No. AP-78-35
T/A BATTLE'S TRANSPORTATION for)	
Temporary Authority to Perform)	
Special Operations)	

By Order No. 1894, served September 29, 1978, the above-captioned application was denied pursuant to the Commission's finding that existing certificated carriers, Conval Port Medivan, Inc. (Conval Port), and Ironsides Medical Transportation Corporation (Ironsides), were capable of providing the service for which a need had been shown. On October 2, 1978, McKinley Battle (Battle) filed an application for reconsideration of Order No. 1894. On October 11, 1978, Ironsides filed a reply thereto.

Battle raises three arguments in support of the application for reconsideration. First, both Battle and his counsel certify that they were not served with copies of the protests filed herein by Conval Port and Ironsides in contravention of Rules 4 and 5 of the Commission's Rules of Practice and Procedure. Our review of the protesting letters shows that they are not accompanied by the certificate of service required by Rule 4-07. Battle asserts that this lack of notice not only resulted in his failure to reply to the protests, but precludes effective appeal inasmuch as Battle is not privy to the evidence upon which the Commission based Order No. 1894. Battle also asserts that the representations of the opposing carriers are "inherently incredible" and that the Commission failed to make proper findings of fact.

In considering applications for temporary authority, the Commission is guided by Title II, Article XII, Section 4(d)(3) of the Compact which provides that,

[t]o enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service.

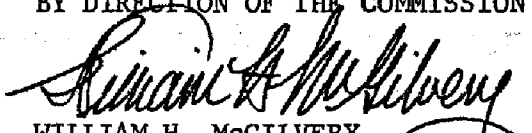
Such temporary authority unless suspended or revoked for good cause, shall be valid for such time as the Commission shall specify, but for not more than an aggregate of 180 days and create no presumption that corresponding permanent authority will be granted thereafter. (Emphasis added.)

This subsection recognizes that strict procedural niceties must, on occasion, be abandoned so that immediate and urgent needs can be met. At the same time, a stricter substantive burden is imposed on an applicant for temporary authority. Accordingly, the Commission has often disposed of temporary authority applications without formal notice to parties where the facts of the situation justify such action. That such action is within our discretion is clear. Baltimore Transfer Co. v. I.C.C., 114 F.Supp. 558 (D.C. Md. 1953), affirmed, 346 U.S. 890, 74 S.Ct. 225, 98 L.Ed. 393 (1953), rehearing denied, 347 U.S. 908, 74 S.Ct. 426, 98 L.Ed. 1066 (1954). All that is required is that the Commission refrain from acting in a manner that is arbitrary and capricious and that there be some evidence in the record to support our decision. East Coast Transp. Co., Inc. v. U.S., 556 F.2d 741 (5th Cir. 1977). Garrett Freight Lines, Inc. v. U.S., 540 F.2d 450 (9th Cir. 1976).

With respect to Battle's substantive arguments, Ironsides asserts that it has been awarded the subject contract by the Veterans Administration, */ and on October 12, 1978, a copy of said contract was filed with the Commission as Ironsides' WMATC Tariff No. 2. Thus, it appears that Ironsides, which holds appropriate authority and has provided the proposed service in the past, is, indeed, ready, willing and able so to do now and in the future. Accordingly, and upon consideration of all filings to date, we find that applicant has failed to sustain its burden of showing that there is no carrier service capable of meeting the need expressed by the Veterans Administration.

THEREFORE, IT IS ORDERED that the above-referenced application for reconsideration is hereby denied.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director

*/ It should be noted that the letter from the Veterans Administration submitted with Battle's application did not indicate a firm commitment to award a contract to Battle.